IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Sales Tax Revision No. 15 of 2002
(Old No. 742 / 1992)

The Commissioner of Sales Tax,
Uttar Pradesh, Lucknow

..... Applicant/Revisionist

Versus

Chief Engineer
H.S.C.L. Tanakpur (Khatima)
District Nainital.

..... Opposite Party

Mr. R.C. Arya, Standing Counsel for the revisionist-State.
None for the respondent/ opposite party.

Hon'ble Prafulla C. Pant, J.

Heard.

2) This revision, preferred under Section 11(1) of the U.P. Sales Tax Act, 1948, is directed against the judgment and award dated 31.01.1992 passed by the Trade Tax Tribunal, Bareilly which pertains to the assessment year 1986-87, whereby, the second appeal of the assessee was allowed by said Tribunal.

3) Brief facts of the case are that, the assessee, in the present case, is unit of Government of India registered under Section 7(1) of Central Sales Tax Act. The assessee imported water pumps, spares and hydroelectric press etc. of the value of Rs. 9,81,996.40 against central declaration

form ‘C’. The assessing authority issued notice under Section 10A and under Rule 15 of the Central Sales Tax Act alleging that the assessee falsely represented showing the aforesaid items covered under his certificate of registration showing i.e. form ‘B’. The assessing authority, after hearing the concerned party, imposed penalty of Rs. 1,47,300/- against which appeal of the assessee was dismissed by the Assistant Commissioner (Judicial) Sales Tax. However, aggrieved by said orders when the assessee preferred appeal before the Tribunal, the Tribunal after hearing the parties, allowed the appeal holding that the assessee was granted registration for the purchase of aforesaid items for construction of Barrage.

4) The Revenue has preferred this revision challenging said order of the Tribunal.

5) For imposing penalty, the assessing authority should have convinced itself that the assessee made attempts to evade the payment of tax. From the impugned order, it is clear that in the certificate of registration, it was clearly mentioned at Sl. No. 1(d) in form ‘B’ that the imported goods under form ‘C’ would be used for the purpose of electricity generation. It is not the case of the revenue that the aforesaid items were imported for sale. Since as per entry in form ‘B’ the purchased items were to be used for construction of Tanakpur Barrage, as such, the goods cannot be said to have been imported for the trade. Moreover, the Tribunal found that the assessing authority negligently issued form ‘B’, as it was not required to be issued for the items to be used for construction of the

Barrage. As such, for the negligence of the assessing authority, the assessee can not have been held liable for making payment of penalty, as there was no intention on the part of the assessee to sell the items and, thereby, to evade tax. Therefore, this Court is in agreement with the impugned award of the Tribunal and finds no force in the revision.

6) The Revision is dismissed in limine.

(Prafulla C. Pant, J.)

Dt: 06.02.2006
H.Negi